

# Rules and Regulations

Federal Register

Vol. 68, No. 39

Thursday, February 27, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1738

#### Rural Broadband Access Loans and Loan Guarantees

**AGENCY:** Rural Utilities Service, USDA.  
**ACTION:** Final rule; technical correction.

**SUMMARY:** The Rural Utilities Service (RUS) published in the *Federal Register* on Thursday, January 30, 2003, at 68 FR 4684, a rule amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This document makes a technical correction to the final rule.

**DATES:** Effective January 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250-1590. Telephone number (202) 720-9554, Facsimile (202) 720-0810.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03-2199, published on January 30, 2003, at 68 FR 4684, make the following correction:

#### § 1738.10 [Corrected]

1. On page 4688, in column one, in the fourth line of § 1738.10(b), in the

fourth line, remove “telecommunications loan made under”, and add, “telecommunications loan made or guaranteed under” in its place.

Dated: February 14, 2003.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Services.*

[FR Doc. 03-4563 Filed 2-26-03; 8:45 am]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 103

[INS No. 2260-03]

RIN 1115-AH00

#### Readjustment of Immigration Benefit Application Fees

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** On January 24, 2003, the Immigration and Naturalization Service (Service) published an interim rule in the *Federal Register* adjusting the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers. The Service was required to take that action under provisions of section 457 of the Homeland Security Act of 2002, Public Law 107-296. However, Congress has now repealed that section in the Homeland Security Act Amendments of 2003. Accordingly, this rule readjusts the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account and recover the cost of processing immigration benefit applications and associated administrative costs and the costs of asylum applications pursuant to law. Federal guidelines require the Service to establish and collect fees to recover the full costs of processing immigration benefit applications.

**DATES:** *Effective date:* This rule is effective February 27, 2003.

*Comment date:* Written comments must be submitted on or before April 28, 2003. Comments on the interim rule published on January 24, 2003, and comments on this interim rule will be addressed jointly in the final rule.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington DC 20536. To ensure proper handling, please reference INS Number 2260-03 on your correspondence. You may also submit comments electronically at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, you must include INS No. 2257-03 in the subject box so that your comments can be properly routed to the appropriate office. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514-3410.

#### SUPPLEMENTARY INFORMATION:

#### Legal Authority To Charge Fees

*A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991*

As a federal agency, the Immigration and Naturalization Service (Service) long has had statutory authority to charge fees for services provided. *e.g.*, 31 U.S.C. 9701. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. No. 100-459, sec. 209, 102 Stat. 2186, 2203 (October 1, 1988), authorized the establishment of the Immigration Examinations Fee Account (IEFA) in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization services. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-515, sec. 210(d), 104

Stat. 2101, 2121 (November 5, 1990), Congress further provided that “fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.” 8 U.S.C. 1356(m).

The House Conference Report to the bill, entitled “Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1996, and For Other Purposes” H.R. Conf. Rep. No. 104-378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states “(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the \* \* \* Service and that the costs of these activities should be supported by the [IEFA].” *Id.*

In a final rule effective October 13, 1998, (except for the Form N-400, which took effect on January 15, 1999)

the Service raised the majority of fees to recover the full costs of processing immigration benefit applications, and added a “surcharge” setting the fees at a level sufficient to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners. The Service subsequently adjusted the levels of fees in the IEFA, after notice and comment, effective February 19, 2002.

**The Impact of Section 457 of the Homeland Security Act on the Fee Structure**

In section 457 of the Homeland Security Act of 2002, Congress amended section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) by striking “services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” and inserting “services.”. This amendment effectively repealed the statutory basis for surcharges. Accordingly, the Service reduced the immigration benefit application fees by an average of \$50, or 25 percent, for the surcharges applied to the majority of immigration benefit applications (see 68 FR 3798, dated January 24, 2003).

**The Impact of the Homeland Security Act Amendments of 2003**

In section 107 of Homeland Security Act Amendments of 2003, Congress amended the Homeland Security Act by striking section 457, including the amendment made by such section. As a result, the Service is once again authorized to add a surcharge to immigration benefit applications in order to fund the processing of asylum and refugee applications as well as those immigration benefit applications processed at no charge to applicants/petitioners. Accordingly, the Service is readjusting the immigration benefit application fee schedule by adding in the surcharges that were removed on January 24, 2003, thus restoring the fees to the pre-January 24, 2003, levels. The submission of the reinstated fees reflected in the table below is required for applications submitted on or after February 27, 2003. The Service will accept applications or petitions submitted with the fee that was in effect before the publication of this interim rule, if the application or petition is postmarked on or before February 27, 2003. The following table displays the new immigration benefit application fees.

TABLE 1.—CURRENT VERSUS NEW IMMIGRATION BENEFIT APPLICATION FEES

Form No.	Description	Fee prior to 1/23/03	Current fee	Fee under this rule
I-17 .....	Petition for Approval of School Attendance by Nonimmigrant Student ..	\$580	\$517	\$580
I-90 .....	Application to Replace Permanent Resident Card .....	130	95	130
I-102 .....	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.	100	73	100
I-129 .....	Petition for A Nonimmigrant Worker .....	130	96	130
I-129F .....	Petition for Alien Fiancé(e) .....	110	81	110
I-130 .....	Petition for Alien Relative .....	130	96	130
I-131 .....	Application for Travel Document .....	110	80	110
I-140 .....	Immigrant Petition for Alien Worker .....	135	99	135
I-191 .....	Application for Permission to Return to an Unrelinquished Domicile ....	195	142	195
I-192 .....	Application for Advance Permission to Enter as a Nonimmigrant .....	195	142	195
I-193 .....	Application for Waiver of Passport and/or Visa .....	195	142	195
I-212 .....	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	195	142	195
I-485 .....	Application to Register Permanent Residence or to Adjust Status .....	255	186	255
I-526 .....	Immigrant Petition by Alien Entrepreneur .....	400	290	400
I-539 .....	Application to Extend/Change Nonimmigrant Status .....	140	102	140
I-600/600 A .....	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	460	332	460
I-601 .....	Application for Waiver of Grounds of Excludability .....	195	142	195
I-612 .....	Application for Waiver of the Foreign Residence Requirement .....	195	142	195
I-751 .....	Petition to Remove the Conditions on Residence .....	145	105	145
I-765 .....	Application for Employment Authorization .....	120	88	120
I-817 .....	Application for Family Unity Benefits .....	140	102	140
I-824 .....	Application for Action on an Approved Application or Petition .....	140	103	140
I-829 .....	Petition by Entrepreneur to Remove Conditions .....	395	286	395
N-400 .....	Application for Naturalization .....	260	188	260
N-565 .....	Application for Replacement Naturalization Citizenship Document .....	155	113	155
N-600 .....	Application for Certification of Citizenship .....	185	134	185
N-643 .....	Application for Certificate of Citizenship in Behalf of an Adopted Child	145	105	145

### **The Impact of the Homeland Security Act Amendments of 2003 on Current Programs**

The statutory amendment restores the funding for the asylum and refugee programs and assures the continued ability of the Service to adjudicate applications for these programs. This amendment also restores funding for the adjudication of other applications for which the Service grants a fee waiver or exemption under the relevant standards, and allows the Service to once again process those applications at no charge to designated applicants and petitioners.

### **Good Cause Exception**

This interim rule is effective on February 27, 2003, although the Service invites post promulgation comments and will address any such comments in a final rule. The Service finds that good cause exists to adopt this rule without the prior notice and comment period and delayed effective date ordinarily required by 5 U.S.C. 553(b) and (d). The Service had set the pre-January 24, 2003, fee levels through a notice and comment rulemaking and this rule simply restores that same fee schedule now that Congress has reinstated the legal authority for the Service to collect fees at these levels.

Since section 107 of the Homeland Security Act Amendments of 2003 is effective upon enactment, and the past hiatus in funding the asylum and fee waiver programs has the potential for causing disruption of those programs, this rule is made effective upon publication. This rule merely restores the preexisting fee structure after a short lapse in statutory authority, and the surcharges set by this rule are needed in order to be able to fund asylum and refugee, fee waiver and exemption, and other humanitarian programs. It would be impracticable and contrary to the public interest to make this interim final rule effective 30 days after publication in the **Federal Register**.

### **Regulatory Flexibility Act**

The Acting Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

The Service acknowledges that a number of small entities, particularly those filing business-related

applications and petitions, such as Form I-140, Immigrant Petition for Alien Worker; Form I-526, Immigrant Petition by Alien Entrepreneur; and Form I-829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule. For FY 2003, the INS projects approximately 110,000 Forms I-140, 300 Forms I-526, and 200 Forms I-829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The Service does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### **Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

The Service has assessed both the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a determination that although restoring

the surcharge will increase the costs to individual applicants and petitioners who submitted applications or petitions to the Service for adjudication, the benefit to other applicants and the public interest of the Service being able to continue to provide asylum, refugee, and other humanitarian programs at the funding levels intended by Congress through its repeal of section 457 substantially exceeds the costs.

The determination of the economic impact of the restoration of the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003 depends on the baseline used for comparison. Although the difference in the fees collected would exceed \$100 million a year if compared to the fees contained in the schedule made effective on January 24, 2003, that fee schedule is not the appropriate baseline for purposes of determining whether this rule has a economically significant regulatory impact under Executive Order 12866. By striking section 457 of the Homeland Security Act of 2002, Congress has indicated that the Service should return to the fee schedule in place prior to January 24, 2003. This interim rule merely restores the previous fee schedule. Using the pre-January 24th fee schedule as a baseline, this interim rule will not have a significant economic impact.

### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### **Executive Order 12988: Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### **Paperwork Reduction Act**

This rule requires that the fees for application and petition forms identified in this interim rule be increased in light of section 107 of Homeland Security Act Amendments of 2003. Since this is merely a reinstatement of fees prior to Section 457 of Public Law 107-296, the net effect of the cost burden on the public is negligible, the Service has submitted

the required Paperwork Reduction Change Worksheet (OMB-83C) to the OMB reflecting the new fees and cost burdens on the public, and the OMB has approved the changes.

To ensure that the public is fully aware of these changes the new fees will be highlighted on the Service's Web site at: [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedure, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7(b)(1) is amended by revising the entries for the following forms, to read as follows:

**§ 103.7 Fees.**

\* \* \* \* \*  
(b) \* \* \*  
(1) \* \* \*  
\* \* \* \* \*

Form I-17. For filing a petition for school approval or recertification—\$580 plus \$350 per additional campus listed on Form I-17B.

\* \* \* \* \*

Form I-90. For filing an application for a Permanent Resident Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—\$130.

\* \* \* \* \*

Form I-102. For filing a petition for an application (Form I-102) for Arrival/Departure Record (Form I-94) or Crewman's Landing (Form I-95), in lieu of one lost, mutilated, or destroyed—\$100.

Form I-129. For filing a petition for a nonimmigrant worker, a base fee of \$130. For filing an H-1B petition a base fee of \$130 plus an additional \$1,000 fee in a single remittance of \$1,130. The remittance may be in the form of one or two checks (one in the amount of \$1,000 and the other in the amount of \$130). Payment of this additional \$1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional \$1,000 fee is

not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional \$1,000 fee also does not apply to certain filings by any employer as provided in § 214.2(h)(19)(v) of this chapter.

Form I-129F. For filing a petition to classify nonimmigrant as fiancée or fiancé under section 214(d) of the Act—\$110.

Form I-130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—\$130.

Form I-131. For filing an application for travel documents—\$110.

Form I-140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—\$135.  
\* \* \* \* \*

Form I-191. For filing applications for discretionary relief under section 212(c) of the Act—\$195.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—\$195.

Form I-193. For filing an application for waiver of passport and/or visa—\$195.

Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—\$195.  
\* \* \* \* \*

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$255 for an applicant 14 years of age or older—\$160 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.  
\* \* \* \* \*

Form I-526. For filing a petition for an alien entrepreneur—\$400.

Form I-539. For filing an application to extend or change nonimmigrant status—\$140.  
\* \* \* \* \*

Form I-600. For filing a petition to classify an orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$460.

Form I-600A. For filing an application for advance processing of orphan petition. (When more than one

petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$460.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—\$195.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—\$195.  
\* \* \* \* \*

Form I-751. For filing a petition to remove the conditions on residence, based on marriage—\$145.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$120.  
\* \* \* \* \*

Form I-817. For filing an application for voluntary departure under the Family Unity Program—\$140.  
\* \* \* \* \*

Form I-824. For filing for action on an approved application or petition—\$140.

Form I-829. For filing a petition by entrepreneur to remove conditions—\$395.  
\* \* \* \* \*

Form N-400. For filing an application for naturalization—\$260.  
\* \* \* \* \*

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—\$155.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—\$185.

Form N-643. For filing an application for a certificate of citizenship on behalf of an adopted child—\$145.  
\* \* \* \* \*

Dated: February 25, 2003.

**Michael J. Garcia,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 03-4747 Filed 2-25-03; 11:36 am]